

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6471 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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HARESH CHIMANLAL SHELAT

Versus

STATE OF GUJARAT

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Appearance:

MRS DT SHAH for Petitioner

MR NANDISH CHUDGAR for Respondent No. 1, 2

None present for Respondent No. 3, 4, 5

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 31/03/98

ORAL JUDGEMENT

Heard the learned counsel for the parties.

2. The petitioner, an employee of the Gujarat State Forest Development Corporation Limited, filed this special civil application and prayer has been made for quashing and setting aside of the order annexure 'C' dated 30th January, 1986 under which the appeal filed by

the petitioner for giving him the retrospective promotion has been rejected.

3. The petitioner was promoted to the post of Senior Accountant under the order dated 21st March, 1983 with effect from 1-4-1980. The respondents No.3 to 5 were given promotions on this post vide order dated 24th August, 1979. The respondents No. 3 to 5 were promoted earlier to the petitioner on the post of Senior Accountant.

4. The learned counsel for the petitioner admits that under the order of the Corporation dated 29th March, 1979, the petitioner's pay of Rs.445/- was reduced to Rs.440/- for a period of one year without permanent effect by way of penalty. So the day on which the respondents No.3 to 5 were promoted to the post of Senior Accountant, the penalty aforesaid given to the petitioner by the Corporation was in currency. On the basis of the said penalty, the petitioner was not given the promotion and rightly so because even if the criteria for promotion is seniority-cum-merit then too if there is adversity in the service record of the senior then he can be superseded. The petitioner now made a claim that as he has been promoted later on his promotion should relate back to the day on which the respondents No.3 to 5 have joined the post of Senior Accountant on promotion.

5. The learned counsel for the petitioner contended that the denial of retrospective promotion to the petitioner amounts to double penalty but I do not find any substance in this contention. It is not a case of double penalty but because of adversity in the service record of the petitioner, he is not given promotion along with his juniors. When the juniors were promoted earlier than the petitioner, the seniority in higher category has to be counted from the date of continuous officiation on the higher post and in case the petitioner has been taken to be junior to these respondents, the Corporation has not committed any illegality, which calls for interference of this Court sitting under Article 226 of the Constitution of India.

6. In the result, this special civil application fails and the same is dismissed. Rule discharged.

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